

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 08-2881 JB

FERNANDO RODRIGUEZ-DOMINGUEZ,

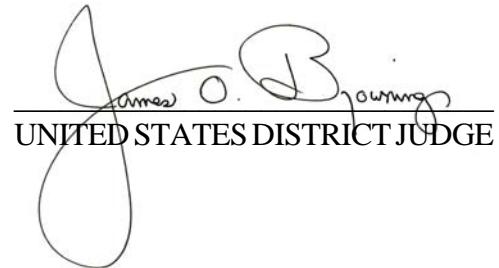
Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Motion for Downward Departure, filed April 17, 2009 (Doc. 21). The Court held a sentencing hearing on April 23, 2009. The primary issues are: (i) whether the Court should grant Defendant Fernando Rodriguez-Dominguez a downward departure from the advisory guideline range because his criminal history category allegedly substantially over-represents the seriousness of his criminal history; (ii) whether the Court should grant Rodriguez-Dominguez a downward departure from the guideline range because he was young at the time of the commission of the predicate offense; and (iii) whether the Court should depart downward because Rodriguez-Dominguez' allegedly unusual familial and cultural ties to the United States were the motivations for his reentry. While the grounds advanced, either alone or together, authorize a departure under the appropriate circumstances, the Court has trouble distinguishing Rodriguez-Dominguez' situation from many other defendants who illegally re-enter the United States after committing a serious felony offense in this country, and thus the Court concludes that Rodriguez-Dominguez' case remains within the heartland of cases that the United States Sentencing Commission considered when it arrived at the guideline that it did for a defendant with this criminal history. For the reasons stated at the sentencing hearing, and for further

reasons consistent with those already stated, the Court will deny the motion for a downward departure.

IT IS ORDERED that the Defendant's Motion for Downward Departure is denied.



James B. Fouratt
UNITED STATES DISTRICT JUDGE

Counsel:

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